

REMARKSI. Response to RestrictionA. Provisional Election

Applicants hereby provisionally elect Group I, as directed to EAS tags, as directed to Claims 1-24 and 49-62. New Claims 63-66 are also elected as directed to Group I.

B. Traversal of Restriction

This election is with traverse.

It is submitted that Claims 25-48 are properly considered with the claims of Group I because of the relationship between what the Office Action has identified as different species:
Group I: EAS Tag system; Group II: RFID Tag system, as described below.

Pursuant MPEP § 806.04(b):

Species, while usually independent, may be related under the particular disclosure. Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those covered in MPEP § 806.05 -§ 806.05(i). If restriction is improper under either practice, it should not be required.

Claim 49 has been amended to specify the term "electronic tag" as a genus encompassing both EAS and RFID tags. Further it is noted that RFID tags themselves, in certain configurations, operate as EAS tags (see, for example, Par. 25 of the present specification). Thus the two purported species identified by the Office Action are both (A) species under a claimed genus and (B) related. Thus the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions.

The Office Action has not addressed the application of restriction regarding the "other types of restrictions" thus at this time only the species restriction can be addressed.

As to the species requirement, the Office Action has not set forth how Groups I and II are separate and independent. In any event, 37 CFR 1.141 provides that a reasonable number of species may still be claimed in one application if the other conditions are met. See, MPEP §806.04(a) As demonstrated, since an RFID tag can operate as an EAS tag, then RFID tags and EAS tags are not mutually exclusive.

Thus it is submitted that the Office Action has not established sufficient basis for insisting upon the restriction and it is requested that the restriction be removed.

B. Presentation of Generic Claim

In the event the restriction is not removed, it is submitted that new Claims 49 is a generic claim (as are new dependent Claims 63-66) and upon allowance, the restricted claims should be examined. MPEP § 806.04(d).

II. Claim Amendments

It is submitted that the new Claims 63-66 and the above amendments to the claims are supported by the application as originally filed and add no new matter.

III. Conclusion

Claims 1-62 are pending in the present application. New Claims 63-66 have been added by this Amendment. It is submitted that new Claims 63-66 are properly considered within Group I.

It is also submitted that the restriction requirement should be removed. In any event, upon allowance of the genus claim, the remaining claims should be examined.

Respectfully submitted,

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By: John A. Rafter, Jr.
John A. Rafter, Jr.
Reg. No. 31,653

Customer No. 33451
STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Telephone: (503) 224-3380
Facsimile: (503) 220-2480
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